

**STATE OF ILLINOIS**  
**ILLINOIS COMMERCE COMMISSION**

Commonwealth Edison Company	:	
	:	
Verified Emergency Petition for a Declaratory	:	
Ruling determining Commonwealth Edison	:	
Company's obligations under the provisions of	:	
Article IX of the Public Utilities Act, including	:	
220 ILCS 5/9-102, 103, 104, 201, 240, and	:	
241, to pay under ComEd's Rider 3—Qualified	:	
Solid Waste Energy Facility Purchases to	:	Ill. C.C Docket No. 02-0455
Resource Technology Corporation for	:	
purchases of energy from Resource	:	
Technology Corporation's facility located at	:	
14732 East 2100 North Road, Pontiac, Illinois	:	
in quantities that are in excess of that facility's	:	
10 MW configured capacity specified in the	:	
Commission's Order in Docket 97-0034 dated	:	
October 8, 1997 or for other relief.	:	

**STAFF REPLY TO RESOURCE TECHNOLOGY CORPORATION'S  
RESPONSE**

**NOW COMES** the Staff of the Illinois Commerce Commission ("Staff") and replies to "RTC's Response To Verified Emergency petition For Declaratory Ruling And Staff Response." On July 5, 2002, the Commonwealth Edison Company ("Edison" or the "Company") filed a Verified Emergency Petition for Declaratory Ruling ("Petition") and an Emergency Motion of Commonwealth Edison Company for Issuance of a Declaratory Ruling or Other Relief ("Motion"). Edison served the Petition and Motion on RTC on July 8, 2002.

In essence, Edison asked the Illinois Commerce Commission ("Commission") to interpret the Company's obligations pursuant to rate-related

statutory requirements of Public Utility Act provisions 220 ILCS 5/9-102, 103, 104, 201, 240 and 241 in relation to the Commission's Order in Dockets 97-0031 – 0045 (consolidated), and Docket 97-0034, in particular. On July 15, Staff filed a Response in which it concluded that:

Staff thus supports the entry by the Commission of an Order determining that ComEd is not obliged by any of the provisions of the Public Utilities Act to pay the retail rate for purchases of energy from RTC's facility located at 14732 East 2100 North Road, Pontiac, Illinois, in quantities that are in excess of that facility's 10MW configured capacity specified in the Commission's Order in Docket 97-0034 dated October 8, 1997.  
Staff Response at page 4.

On July 18, 2002, RTC filed a Response to Edison's Petition and Motion and to Staff's Response to the same<sup>1</sup>. RTC asserts that the Commission's Order supports an interpretation that the generating facility at Pontiac, Illinois is permitted to generate up to 39 MW of electricity to sell to Edison at the Section 8-403.1 Retail Rate. RTC's sole argument that goes to the substance of the Commission's Order, that the Commission intended to grant RTC with an ability to configure an aggregate MW capacity in Edison's territory in whatever manner RTC might choose, is not sustainable. The Commission should declare that its Order was intended to indicate that the Pontiac facility was to be configured at 10 MW.

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<sup>1</sup> At page 4 of its Response, RTC notes that it was not served with a copy of Staff's Response. The Commission's Rules of Practice provide that filings shall be served "upon all parties to the proceeding." 83 Ill. Admin. Code 200.150b). Staff provided service on the parties of record. RTC had knowledge of the existence of the Docket since at least July 8, but chose not to become a party of record until July 18, three days after Staff's filing. Moreover, since RTC was not required to file until July 19, but chose to file its Response one day early, RTC has no argument that it was prejudiced in any way.

RTC argues that its Pontiac facility can be configured to a maximum of 39 MW, if RTC so chooses in its sole discretion. This is what RTC asserts the Commission intended in the Commission's 1997 Order that is the subject of this Declaratory Judgment proceeding. The sole basis for RTC's argument is that:

It is undisputed that the ICC looked to the aggregate megawatt capacity of each of RTC's proposed facilities to determine whether RTC met the qualifications necessary to become an owner of QSWEF facilities.  
RTC Response at 9.

RTC's position is quite wrong. (However, even if RTC were correct, its assertion would be irrelevant to the question of the Commission's intention regarding the size of the Pontiac facility.) Contrary to RTC's declaration, the aggregation was not for the purpose of determining whether RTC could qualify as an *owner* of QSWEFs. Rather the aggregation was performed for the specific and limited purpose of determining whether RTC was "primarily engaged in the business of producing or selling electricity, gas, or useful thermal energy from a source other than one or more qualified solid waste energy facilities." Order, Docket Nos. 97-0031 et. al. at 7.

This is a crucial aspect of analyzing petitions requesting approval of QSWEF status. As Section 8-403.1(e) clearly warns:

The Illinois Commerce Commission shall not require an electric utility to purchase electricity from any qualified solid waste energy facility which is owned or operated by an entity that is primarily engaged in the business of producing or selling electricity, gas, or useful thermal energy from a source other than one or more solid waste energy facilities.

The methodology employed by the Commission to reach the required determination requires the petitioner to divulge all of its electric, gas, and thermal energy holdings.

The determination of whether a petitioner is primarily engaged in generation from non-QSWEFs would be made through a comparison of the **total** PC[sic] of QSWEFs and **total** PPC of non-QSWEFs owned or operated by that petitioner.<sup>2</sup> (Emphasis supplied.)

Order, Docket Nos. 97-0031 et al. at 8.

If the **total** PPC for all non-QSWEF facilities owned or operated by a petitioner exceeds the **total** PPC for all QSWEF energy facilities owned or operated by that petitioner, then the petitioner is not “primarily engaged” as required by the statute. The Commission is precluded from ordering a utility from entering into a contract to purchase electricity at the retail rate from a “non-primarily engaged” petitioner’s facility. However, the aggregation that the Commission must perforce engage in for purposes of making this determination does not, as RTC would have it, somehow extend back to expand the on-site capacity for each individual facility in the accounting. Each individual facility remains configured as it was presented by the petitioner. In this case, RTC represented that the Pontiac facility would operate at a level of ten MW. Hearing transcript, Docket Nos. 97-0031 et al. at 68 – 69.<sup>3</sup>

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<sup>2</sup> “PPC” indicates the maximum gross power production capacity of any facility. In making its analysis in the underlying case, the Commission specifically relied on its Order in Docket Nos. 96-0354/96-0378) consolidated. That, too, is an Order involving RTC QSWEF petitions. It is clear from that Order that the Commission does not intend to permit a petitioner, at its whim, to aggregate the generating capacities of separate QSWEF facilities. See, attached copy of the Commission’s Order in that Docket.

<sup>3</sup> RTC’s attempt to turn the deficiency of its petitions’ failure to define the capacity for the Pontiac facility into support for the larger capacity represented by the aggregate capacity cannot be countenanced. See, RTC Response at 10. It was this very failure of the RTC’s petitions that required Staff to elicit the megawatt capacity for each facility, including the Pontiac facility, on

RTC applies its “aggregation” argument to try to shoehorn a possible 39 MW onto the Pontiac facility site. However, nowhere, even in the Commission’s properly performed “primarily engaged” aggregation analysis does the number “39” appear. The only aggregate number addressed by the Commission is “65.” RTC argues that the individual capacities of its six proposed facilities located in Edison’s service territory totals to 39 MW. RTC Response at 10. RTC extrapolates this number as a number that is available to RTC at any configuration RTC would choose. For instance, following RTC’s reasoning, the Pontiac site could reach 39 MW as long as RTC generated no electricity at the other five sites.

There is absolutely no support in the Commission’s Order for this sophistry. RTC filed fifteen separate petitions, one each for fifteen separate and distinct generating facilities. RTC’s witness testified as to clearly separate and identifiable capacity levels for each of those fifteen facilities. A review of the fifteen separate petitions underlying Docket Nos. 97-0031 et al. shows that RTC never requested the flexibility to shift portions of an aggregate capacity between sites. The Commission never engaged in any utility territory-by-territory analysis to determine aggregate generating capacities. In short, there is no “39 MW in Edison’s territory” analysis. It is nothing more than an attempt to post hoc rationalize RTC’s actions that exceed the scope of its authority as granted by the Commission. What there is, is the Commission’s unequivocal statement that:

The Docket 97-0034 landfill, located at 14732 East North Road, Pontiac, Illinois, **will have a capacity of 10 MW**, with a projected

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cross-examination. RTC’s supporting witness’ testimony clearly denoted that each facility had a specified generating capacity. In the case of the Pontiac facility, that capacity was to be 10 MW.

commercial operation date in the 1<sup>st</sup> quarter of 1998. The facility is located in ComEd's territory.  
Order, Docket Nos. 97-0031 et al. at 6. Emphasis supplied.

It is important to know the generation level of each approved QSWEF facility. The ability of each station to generate electricity translates directly into sales to an electric utility. The amount of sales at the retail rate directly affects the level of tax credits taken by the utility. The amount of tax credits taken by the utility directly translates into the amount the QSWEF facility must repay the State. At the time of a facility's petitioning for QSWEF status, this potential amount affects the type of review the Staff must perform. It affects the type of investments and the level of funding for each investment Staff would recommend for ensuring each separate QSWEF's ability to reimburse the State. In order to do this properly, the amount of generation for each facility in question should be determined with as much certainty as possible. Once these determinations have been made, the QSWEF cannot make changes without the Commission's formal approval.

On page 11 of its Response, RTC notes that its aggregate output in Edison's territory is lower than 39 MW. As proof of this, the Response relies on the Affidavit of John Connolly, attached to the Response as Exhibit F. Mr. Connolly recounts that three operational facilities have the following current *net* capacities: McCook operates at a net capacity of 2 MW; Hillside operates at a net 9 MW; and Pontiac operates at a net 19 MW. He also notes that two other

facilities are not operational, and therefore have net operational capacities of 0 MW.

There are several problems with this analysis. First, according to RTC's own argument, RTC has failed to account for the operations of a sixth facility, the 6MW generating facility approved for Beecher. See, RTC Response at 10. Second, the Commission's aggregate PPC analysis for the issue of "primarily engaged" employed *gross* maximum capacity, not the *net* capacities related by Mr. Connolly. Third, and perhaps most telling, RTC's response mentions a supplemental self-certification submission recently made at the Federal Energy Regulatory Commission ("FERC") for the Pontiac facility. RTC Response at 3. This is interesting, because this supplemental filing informs the FERC that the Pontiac facility will have a gross power rating of **35** MW. See, attached RTC FERC 556 filing dated June 10, 2002. Even employing Mr. Connolly's understatement of the PPC resulting from his failure to use gross generating capacities, RTC actually intends to operate more than **46** gross MW in Edison's territory. (This capability rises to 52 MW, accounting for the capacity RTC testified would be on site at the Beecher facility.) This belies RTC's attempt to post hoc rationalize the use of the **39** MW as an aggregate total that can somehow shift between generation sites located within Edison's territory.

The Commission's Order in Docket Nos. 97-0031 et al., including Docket No. 97-0034, approved fifteen separately proposed QSWEFs. The cases were consolidated to lighten the administrative burden on the parties and the Commission. Tr. 6-7. The Commission should not permit that consolidation to be

abused in the manner in which RTC seeks to accomplish here. If RTC wishes to change the configuration of its facilities, it should be required to petition for such a change. A change of this nature would require additional Commission action.

**WHEREFORE**, for the reasons set forth above as well as those previously set forth in Staff's Response of July 15, 2002, Staff supports the entry by the Commission of an Order determining that Edison is not obliged by any of the provisions of the Public Utilities Act to pay the retail rate for purchases of energy from RTC's facility located at 14732 East 2100 North Road, Pontiac, Illinois, in quantities that are in excess of that facility's 10MW configured capacity specified in the Commission's Order in Docket 97-0034, dated October 8, 1997.

Respectfully submitted,

/s/

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